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EMHART GLASS MANUFACTURING INC.  
89 PHOENIX AVENUE  
P.O. BOX 1229  
ENFIELD CT 06082

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In re Application of :  
Hyre et al. : DECISION ON PETITION  
Application No. 10/005,682 :  
Filed: 5 December, 2001 :  
Atty Docket No. 5356-05 :

This is a decision on the petition under 37 CFR 1.137(b),<sup>1</sup> filed on 11 August, 2006, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is not a final agency decision.

This application became abandoned on 10 December, 2005, for failure to file a proper reply to the Notice of Non-Compliant

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<sup>1</sup> Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). Grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Appeal Brief (37 CFR 41.37) mailed on 9 August, 2005, which set a one (1) month shortened period for reply. On 1 September, 2005, petitioner filed a corrected Appeal Brief. The corrected Appeal Brief was determined to be improper, however, and a Notice was mailed on 28 October, 2005. On 21 November, 2005, a second corrected Appeal Brief was filed, along with a three (3) month extension of time. The corrected Appeal Brief was determined to be improper, however, and a Notice was mailed on 25 February, 2006. A corrected Appeal Brief was again filed on 17 March, 2006. Notice of Abandonment was mailed on 3 April, 2006.

The petition lacks the required reply. Petitioners state that the corrected Appeal Brief filed on 17 March, 2006, is the required reply. The corrected Appeal Brief filed on 17 March, 2006, has been determined by the examiner not to be a proper reply because the brief is non-compliant.

Specifically, the Appeal Brief filed on 17 March, 2006, was addressed in the Notice of Abandonment. Therein, it was noted that the reply filed 17 March, 2006, was not acceptable because the Appeal Brief, among other things, did not include an evidence appendix as required and as previously noted in the communication of 15 February, 2006. As such, the 17 March, 2006, submission is not acceptable because the Appeal Brief is still defective and does not address the appendix issue noted in the communication mailed on 15 February, 2006.

Petitioner should file a renewed petition accompanied by a proper Appeal Brief in compliance with 37 CFR 1.192.

Further correspondence with respect to this matter should be addressed as follows:

By mail:           Mail Stop Petition  
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By FAX:           (571) 273-8300  
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By hand:          Customer Service Window  
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                  Randolph Building  
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                  Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

A handwritten signature in black ink, appearing to read "D Wood", is positioned above the printed name.

Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions